

STATUS OF THE CLAIMS

Claims 1-22 were originally filed in this patent application. In the pending office action dated 05/08/2008, claims 1-22 were rejected under 35 U.S.C. §112. Claims 13-22 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 1-22 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,745,879 to Wyman. No claim was allowed. In this amendment claims 1-6 and 13-22 and claims 7-8 and 10-11 have been amended. Claims 7-12 are currently pending.

REMARKS

Reservation of Patent Rights

In this amendment, applicant has amended claims 7-8 and 10-11 and cancelled claims 1-6 and 13-22 from further consideration in this application. Applicant is not conceding that the subject matter encompassed by claims 1-22 prior to the amendments herein is not patentable over the art cited by the examiner. Claims 7-8 and 10-11 were amended, and claims 1-6 and 13-22 were cancelled in this amendment solely to facilitate expeditious prosecution of the remaining claims. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by claims 1-22 as presented prior to this amendment and additional claims in one or more continuing applications.

Rejection of claims 1-22 under 35 U.S.C. §112, second paragraph

The examiner rejected claims 1-22 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. The examiner objected to the term “similar” in claims 1, 5, 7, 11, 13, and 19 as being indefinite. Claims 1, 5, 13, and 19 have been cancelled herein and therefore need not be addressed. Claims 7 and 11 have been amended herein, thereby traversing the examiner’s rejection under 35 U.S.C. §112, second paragraph.

Rejection of claims 13-22 under 35 U.S.C. §101

The examiner rejected claims 13-22 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 13-22 have been cancelled herein and therefore need not be addressed.

Rejection of claims 1-22 under 35 U.S.C. §102(b)

The examiner rejected claims 1-22 under 35 U.S.C. §102(b) as being anticipated by Wyman. Claims 1-6 and 13-22 have been cancelled herein and therefore need not be addressed. The remaining claims are addressed below.

Claim 7 recites:

7. A computer-implemented method for providing metered capacity of at least one hardware_resource on demand, the method comprising the steps of:

- determining when a selected hardware_resource is required;
- when the selected hardware resource is required, determining whether unused billed capacity for a same type of hardware resource is available; and
- if unused billed capacity for a same type of hardware resource is available, assigning the unused billed capacity of the same type of hardware resource to the selected hardware resource.

Wyman teaches licenses for software products, which expressly teaches away from the hardware resources as expressly recited in claim 7 as amended. Column 14 lines 21-28 of Wyman state:

A consumptive unit based license, indicated in policy field 43, grants to the holder a specific number of initial license units (from field 42) and specifies the policy used to account for the consumption of those units. A software product 17 which is being managed by a consumptive license will cause an appropriate number of license units to be consumed to reflect the services provided by the product. Once consumed, units cannot be reused.

Notice that Wyman teaches only software products, which expressly teach away from the hardware resource of claims 7-12 as amended. In addition, nowhere does Wyman teach or suggest, “assigning the unused billed capacity of the same type of hardware resource to the selected hardware resource” as recited in claim 7. In fact, nowhere does Wyman teach anything related to hardware. The teachings of Wyman are restricted to software

licenses. The title of Wyman further shows the field Wyman is restricted to, “Method and system for managing execution of licensed programs”. As programs are specifically software, Wyman cannot teach the limitations of claim 7 which expressly recite “hardware resource” as amended. For the many reasons given above, claim 7 is allowable over Wyman. Claims 8-10 contain similar limitations and are allowable for the same reasons. In addition, claims 8-10 depend on claim 7 which is allowable for the reasons given above. As a result, claims 8-10 are also allowable as depending on an allowable independent claim.

Claim 11 contains limitations similar to claim 7 and is therefore allowable for the same reasons given for claim 7 above. Claim 12 depends on claim 11 and is allowable as depending on an allowable independent claim. Applicants respectfully request reconsideration of the examiner’s rejection of claims 7-12 under 35 U.S.C. §102(b).

Conclusion

In summary, Wyman does not teach, support, or suggest the unique combination of features in applicants’ claims presently on file. Therefore, applicants respectfully assert that all of applicants’ claims are allowable. Such allowance at an early date is respectfully requested. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

By /derekpmartin/
Derek P. Martin
Reg. No. 36,595

MARTIN & ASSOCIATES, L.L.C.
P.O. Box 548
Carthage, MO 64836-0548
(417) 358-4700